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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

In the Matter of)	
)	
Implementation of Sections 2(n) and 332)	GN Docket No. 93-252
of the Communications Act)	
)	
Regulatory Treatment of Mobile Services)	
)	
Amendment of Part 90 of the)	
Commission's Rules To Facilitate Future)	PR Docket No. 93-144
Development of SMR systems in the 800)	
MHz Frequency Band)	
)	
Amendment of Parts 2 and 90 of the)	
Commission's Rules To Provide for the)	PR Docket No. 89-553
Use of 200 Channels Outside the)	DOCKET FILE COPY ORIGINAL
Designated Filings Areas in the 891-901)	
MHz and 935-940 MHz Band Allotted to)	
the Specialized Mobile Radio Pool)	

**PETITION FOR RECONSIDERATION AND CLARIFICATION
GEOTEK COMMUNICATIONS, INC.**

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Dated: December 21, 1994

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SUMMARY

Geotek seeks reconsideration and clarification of the Commission's policy decision to limit the interference protection afforded 900 MHz incumbent licensees to sites licensed as of August 10, 1994. Geotek submits that the Commission should also afford protection to sites licensed after August 10, as long as the application was filed prior to that date.

The Commission has recently agreed to process applications in the 800 MHz band filed prior to August 10. These applications will be granted on a primary basis. While there are differences in the licensing schemes as between 800 MHz and 900 MHz, as a practical matter, these differences do not warrant disparate treatment as incumbents in both frequency bands prepare for the new CMRS MTA regulatory environment. Thus, as with 800 MHz, the Commission should afford protection to sites not only licensed as of August 10, but also sites that were the subject of pending applications filed prior to that date.

Further, not affording protection to sites licensed after August 10 based on timely filed applications unfairly penalizes incumbent licensees who although they had timely filed their applications, failed to receive a grant due to the Commission's application processing backlog. In addition, including timely filed applications in the group of licenses that will be protected will restore the competitive balance within the 900 MHz band. One of Geotek's major competitors has a substantial number of sites licensed prior to the August 10 date.

Geotek started receiving grants of its sites just five business days after the August 10 cut-off date.

Geotek also seeks clarification or reconsideration that (i) the Commission will continue to accept applications for additional secondary sites on an unprotected basis; (ii) all 900 MHz loading requirements -- including 900 MHz loading at renewal -- will be eliminated; and, (iii) any modifications made by incumbent 900 MHz licensees to their systems will be considered "minor" as long as there is no expansion of their composite 22 dBu service contours.

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**PETITION FOR RECONSIDERATION AND CLARIFICATION
GEOTEK COMMUNICATIONS, INC.**

Geotek Communications, Inc. ("Geotek"), by its attorneys, hereby petitions the Commission for reconsideration of the *Third Report and Order* in GN Docket No. 93-252, *et al.* ("Third Report") concerning the regulatory treatment of Commercial Mobile Radio Service ("CMRS") providers.

STATEMENT OF INTEREST

Through its subsidiaries, Geotek holds authorizations in both the 800 MHz and the 900 MHz frequency bands of the Specialized Mobile Radio ("SMR") service. Pursuant to Commission authorization, Geotek is implementing a new FHMA digital technology on its network. The first field tests were successfully conducted in Philadelphia and Geotek is on schedule for implementing its new technology in accordance with the terms of its authorization. Geotek has already made substantial investment in the 900 MHz SMR frequency band. In addition, it fully intends to participate in the auction process for MTA licenses. Thus, Geotek has a direct interest in the outcome of this proceeding.¹

Geotek seeks reconsideration and clarification of the following issue affecting the 900 MHz SMR band.

¹ Geotek filed comments in GN Docket 93-252 on November 8, 1993 in response to the Commission's initial *Notice of Proposed Rulemaking*, 8 FCC Rcd 7988 (1993), as well as comments on June 20, 1994 and reply comments on July 11, 1994 pursuant to the *Further Notice of Proposed Rulemaking*, 9 FCC Rcd 2863 (1994). Geotek also filed comments in PR Docket 89-553 on October 9, 1992 addressing the *Notice of Proposed Rulemaking*, 4 FCC Rcd 8673 (1989), as well as comments on April 23, 1993 and reply comments on May 10, 1993 pursuant to the *Further Notice of Proposed Rulemaking*, 8 FCC Rcd 469 (1993).

I. APPLICATIONS FOR SECONDARY SITES FILED PRIOR TO AUGUST 10, 1994 SHOULD BE AFFORDED INTERFERENCE PROTECTION

Geotek seeks reconsideration and clarification of the Commission's policy decision to grant interference protection ("primary" status) to 900 MHz "secondary" sites licensed prior to August 10, 1994.² While Geotek agrees with the Commission that secondary sites licensed prior to the August 10 cut-off should be afforded primary status, it seeks reconsideration to include in this group sites licensed after August 10 based on applications filed prior to that date. Limiting the scope of the Commission's decision to sites licensed by the cut-off, unfairly penalizes incumbent licensees who timely filed applications but, due to the backlog and processing delay, did not receive a grant until after August 10. The effect of the Commission's decision harms competition in the 900 MHz SMR service and treats similarly situated SMR providers differently contrary to the Budget Act and established precedent.

² *Third Report*, at ¶ 119. Paragraph 119 states that "incumbent 900 MHz licensees have been granted authorizations to construct facilities outside of their DFAs in order to link their facilities in different markets. We will require MTA licensees to afford protection to all such sites licensed prior to August 10, 1994." *Third Report* at ¶ 119 (emphasis added).

A. The Effect of the Commission's Decision Substantially benefits One Segment of the SMR Industry over Another

It is well established that the Commission should treat similarly situated persons comparably.³ Moreover, the Budget Act seeks to ensure that providers of substantially similar services are treated similarly.⁴ The Commission's decisions limit interference protection rights of 900 MHz SMR licensees for their sites that were licensed after August 10, 1994. At the same time the Commission has decided to continue to grant licenses in the 800 MHz SMR band on a fully protected basis as long as the applications were filed before August 10, 1994. This action substantially benefits the 800 MHz segment of the industry over its 900 MHz counterpart. Moreover, the August 10, 1994 cut-off has a disparate impact wholly within the 900 MHz SMR band.

Although the Commission has traditionally used different licensing approaches for the 800 MHz and 900 MHz SMR services, in light of the Budget Act's policy of supporting parity among similar services, no rational basis exists for not affording primary protection to 900 MHz sites licensed after August 10 based on applications filed prior to that date. In the 800 MHz SMR band, licensees define their market areas by the service contours of their transmitters

³ *Melody Music, Inc. v. FCC*, 345 F.2d 730 (1965).

⁴ Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, § 6002(d)(3), 107 Stat. 312, 393-394 (1993) ("Budget Act").

which are licensed on an interference protected or "primary" basis. In the 900 MHz band the Commission licensed sites on a primary and secondary basis, however, as a practical matter, the effect was substantially the same.

In the 900 MHz band, the Commission created a two-phase licensing structure whereby in Phase I, licenses were granted on a primary basis within a Designated Filing Area ("DFA"). The Commission awarded licenses on an exclusive basis in the DFA for each of the 20 frequency blocks available in the 900 MHz band. Recognizing that its two-phase licensing scheme had "placed 900 SMR licensees at a competitive disadvantage to at least 800 MHz SMR licensees in designing and marketing their systems," the Commission granted licenses outside the DFA on a "secondary" basis.⁵ Because the DFA license had been granted on an exclusive basis, as a practical matter, the secondary status was meaningless. Further, in the NPRM to initiate Phase II licensing, the Commission had proposed to protect incumbent licensees to allow them to build-out their systems during the Phase II process.⁶ Thus, the primary/secondary classification had no practical effect and the Commission should treat the two services as

⁵ *Amendment of Section 90.631 Concerning Loading Requirements for 900 MHz Trunked Stations*, 7 FCC Rcd 4914, 4914-15 (1992).

⁶ *Amendment of Parts 2 and 90 to Provide for the Use of 200 Channels Outside the DFAs in the 900 MHz SMR Band, First Report and Order and Further Notice of Proposed Rule Making*, 8 FCC Rcd 1469, 1476 (1993).

substantially similar in affording protection to sites not only licensed as of August 10 but licensed after that date based on applications filed prior to the cut-off.

The *Third Report* adopted an MTA-based market definition for both 800 and 900 MHz SMR services.⁷ As for incumbent carriers in these bands, the Commission suspended the acceptance of 800 MHz applications and "froze" the processing of applications that had been filed but have not been granted as of August 10.⁸ The Commission, however, recently lifted this freeze and agreed to process 800 MHz applications filed prior to August 10.⁹ Licenses granted based on these applications will receive interference protection against the eventual MTA licensee. In the 900 MHz SMR band, the Commission also suspended the acceptance of applications for additional sites; however, it afforded interference protection to only those sites licensed prior to August 10.¹⁰ Unlike the 800 MHz service, licenses granted for applications filed by -- but not granted prior to -- August 10 will not be protected.

⁷ In that proceeding, the Commission also determined that the MTA licenses for both bands would be awarded using auctions.

⁸ *Third Report*, at ¶ 15, 108.

⁹ See, generally, "FCC and Industry to Speed Processing of 800 MHz," News Release, 1994 FCC Lexis 5821 (released November 22, 1994).

¹⁰ *Third Report*, at ¶ 119.

Similarly, for other services as well, when the Commission has established a "cut-off" date, it typically has processed applications filed prior to that date and has issued licenses carrying full protective rights. See *Acceptance of 220-222 MHz Private Land Mobile Applications*, 6 FCC Rcd 3333 (Priv. Rad. Bur. 1991) (The Commission not only processed applications in this band but have granted STAs to allow subsequent modifications of licensed facilities); See also *Amendment of Part 74 Concerning FM Translator Stations, Notice of Inquiry*, 3 FCC Rcd 3664, 3673 (1988) ("[W]e are implementing a general "freeze" on the acceptance of applications for new FM translator stations.... We will continue to process and consider for grant any such application received by the Commission prior to the adoption of this Notice."); *Second Report and Order*, GEN Docket No. 90-54, 6 FCC Rcd 6792, 6818 (1991) (applications filed prior to specific date will continue to be processed).

Thus, the instant cut-off rule applied to 900 MHz applications is very different from the cut-off system generally employed by the FCC. While the Commission has attempted in this docket to implement parity among competing services, the Commission's decision to limit interference protection rights in the 900 MHz band will substantially advantage the 800 MHz segment of the SMR industry over its 900 MHz competitors.

Furthermore, the Commission's decision has already advantaged certain licensees even within the 900 MHz band. Specifically, the decision unfairly bestows primary status upon a Geotek competitor (in the 900 MHz band) for many of its sites for the sole reason that its applications were granted prior to August 10, 1994, while many of Geotek's licenses were granted shortly after August 10.

Melody Music and the Congressional intent expressed in the Budget Act require that the Commission amend its 900 MHz cut-off date so that it processes applications filed by August 10, 1994, not just those licensed by that date.¹¹

B. The Commission's Decision Unfairly Treats Incumbent 900 MHz Providers That Filed Timely Applications And Still Did Not Receive Primary-Protection Grants

Through no fault of their own, incumbent licensees are arbitrarily being penalized for the Bureau's failure to timely process applications that were filed well in advance of the August 10 cut-off date. Geotek filed 70 applications for secondary sites last spring. A portion of these applications were granted on August 17, 1994; five business days after the August 10 cut-off. Geotek understands that the Bureau's Licensing Division has had difficulty meeting its processing speed of service goals in 1994, in part, due to the number and complexity of

¹¹ *Melody Music, Inc. v. FCC*, 345 F.2d 730 (1965).

recent 800 MHz applications for wide-area service. While this is a reasonable basis for the processing delay, Geotek submits that it should not be penalized merely because the Commission did not meet its speed of service goals. Rather, the cut-off should be triggered by an event over which applicants have some control: the date on which the application was filed. For this reason, Geotek requests that the Commission afford 900 MHz MTA licensees protection for all sites that they proposed in applications, which were filed by August 10, 1994.

C. Denying Primary Protection Ignores Incumbent Licensees' Substantial Contribution to the Development of the 900 MHz Band and Disserves the Public Interest

As a matter of policy, the Commission should grant primary status to secondary sites proposed in applications that were filed prior to the August 10 cut-off date. In an Order released in June 1993, the Commission granted PowerSpectrum, Inc. a wholly owned subsidiary of Geotek, a waiver of the SMR construction and loading rules to develop and implement a 900 MHz SMR network that is "technically innovative, spectrally efficient, and responsive to the needs of the SMR marketplace."¹²

Geotek has invested substantial time and money in developing the digital technology for use on its network.¹³ In addition, Geotek has entered into

¹² PowerSpectrum, Inc., DA 93-770 (June 28, 1993) at 1, 6 ("Waiver").

¹³ The Commission has granted subsequent waivers and clarifications of its rules to assist Geotek in bringing its new technology in the marketplace.

management contracts and acquired additional 900 MHz licensees to complete its network. On June 30, 1994, the Commission granted Geotek an STA to construct and field test its new digital technology in Philadelphia and in surrounding areas. The tests have proven successful and Geotek will be seeking type acceptance for the equipment with a planned roll-out date around June 1995. Geotek undertook all of this planning, development and expense with the reasonable expectation that it would be able to effectively compete in the SMR marketplace.¹⁴ Although the Commission initially only licensed sites within the DFA on a primary basis, it recognized that its licensing scheme had prevented 900 MHz licensees from becoming true competitors in the market.

Our multi-phase licensing scheme has limited 900 MHz SMR systems to artificially defined markets and has precluded a free selection of sites in each market. As a result, licensees have been unable to develop the kind of wide-area services expected by today's private radio customers. The constraints of our licensing policies have placed 900 SMR licensees at a competitive disadvantage to at least 800 MHz

¹⁴ In recognition of the contribution existing 900 MHz licensees had made to the development of the band and their existing infrastructures, the Commission had proposed to protect such licensees to allow them to build out their systems during the Phase II process. *Amendment of Parts 2 and 90 to Provide for the Use of 200 Channels Outside the DFAs in the 900 MHz SMR Band, First Report and Order and Further Notice of Proposed Rule Making*, 8 FCC Rcd 1469, 1476 (1993). In the *Third Report*, the Commission has now decided not to allow such build-out to occur and has limited the protection it will afford incumbent licenses to sites licensed prior to August 10.

SMR licensees in designing and marketing their system.¹⁵

The Commission decision not to grant a preference to existing 900 MHz licensees in the auction, coupled with its decision to only protect sites licensed prior to August 10 severely impacts incumbent licensees and limits their ability to effectively compete in the market. In other services the Commission has taken into consideration the impact that changes in its rules would have on existing services.¹⁶ At the very least, the Commission should do the same in the 900 MHz service and afford interference protection to sites licensed after August 10, provided that applications for such sites were filed on or prior to that date.

II. MISCELLANEOUS ISSUES FOR CLARIFICATION OR RECONSIDERATION

A. Additional Secondary Sites

The *Third Report* notes that the Commission "will not allow additional secondary site authorizations in" the 900 MHz band.¹⁷ Geotek suggests

¹⁵ *Report and Order, Amendment of Section 90.631 Concerning Loading Requirements for 900 MHz Trunked Stations*, PR Docket 92-17, 7 FCC Rcd 4914, 4914-15 (1992).

¹⁶ *Second Report and Order/Further Notice of Proposed Rule Making, Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service*, 7 FCC Rcd 3340, 3342-43 (1992) (limiting initial eligibility for Advanced Television frequencies to existing broadcasters) (subsequent history omitted).

¹⁷ *Third Report*, at ¶ 119.

that secondary sites continue to be granted on a purely unprotected basis.

Secondary sites supplement coverage in areas that, due to terrain or other factors, the primary signal is weak or nonexistent. The Commission should continue to allow such sites with the clear understanding that they must not cause interference to the MTA licensee's operation.

B. Elimination of All Loading Requirements

In the *Third Report*, the Commission eliminated all loading requirements in the SMR services, except for the loading requirement for 900 MHz at renewal. Geotek submits that the Commission should eliminate all loading requirements -- including those for renewal -- consistent with the goals of the Budget Act to implement regulatory parity among competing services.

C. Permissive Modifications

Geotek requests that the Commission clarify that incumbent 900 MHz licensees may make modifications to their systems provided that there is no expansion of the composite 22 dBu service contours. The Commission should treat the composite outer 22 dBu contour as the incumbent licensee's protected area and classify all modifications that do not expand the contour as minor, not subject to notice and cut-off procedures.¹⁸

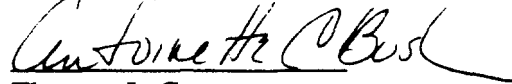
¹⁸ See, 47 C.F.R. §§ 90.164 and 90.165.

CONCLUSION

For the foregoing reasons, the *Third Report* should be reconsidered in the manner advocated above.

Respectfully submitted by

Its Attorneys

A handwritten signature in cursive script, appearing to read "Antoinette Cook Bush", written over a horizontal line.

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